

INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)

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Applicant's or agent's file reference NO 7524/WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/03522	International filing date (day/month/year) 03.04.2003	Priority date (day/month/year) 05.04.2002
International Patent Classification (IPC) or both national classification and IPC A23K1/165		
Applicant NESTEC S.A. et al		


1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of 5 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 16.10.2003	Date of completion of this report 19.07.2004
Name and mailing address of the International preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Rooney, K Telephone No. +31 70 340-3931



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EXAMINATION REPORT**

International application No. PCT/EP 03/03522

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17):*

Description, Pages

1-22 as originally filed

Claims, Numbers

1-37 received on 21.06.2004 with letter of 21.06.2004

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	2-10,12-26,28-31,35-37
	No: Claims	1,11,27, 32, 33,34
Inventive step (IS)	Yes: Claims	
	No: Claims	1-37
Industrial applicability (IA)	Yes: Claims	27-37
	No: Claims	

2. Citations and explanations

see separate sheet

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Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial
applicability; citations and explanations supporting such statement**

1. Reference is made to the following documents:

- D1: ZIEMLANSKI, S., CIESLAKOWA, D., AND RAKOWSKA, M.: 'Balanced intrainestinal nutrition. A preparation for intrainestinal no-residue nutrition' ACTA PHYSIOLOGICA POLONICA., vol. 29, no. 6, 1978, pages 561-573, XP008019215 WARSZAW., PL ISSN: 0374-5627
- D2: NICHOLSON, A., WATSON, A.D.J., AND MERCER, J.R.: 'Fat malassimilation in cats' AUSTRALIAN VETERINARY JOURNAL, vol. 66, no. 4, 1989, pages 110-113, XP001112921 AUSTRALIAN VETERINARY ASSOCIATION, BRUNSWICK, AU ISSN: 0005-0423 cited in the application
- D3: WO 01 62280 A (MARGOLIN ALEX ;SHENOY BHAMI (US); ALTUS BIOLOG INC (US)) 30 August 2001 (2001-08-30)
- D4: SUZUKI, A. ET AL.: 'Effect of bacterial or porcine lipase with low or high fat diets on nutrient absorption in pancreatic insufficient dogs' GASTROENTEROLOGY., vol. 116, 1999, pages 431-437, XP001053436 W.B.SAUNDERS COMPANY, PHILADELPHIA., US ISSN: 0016-5085
- D5: CANTAFORA A ET AL: 'DIETARY TAURINE CONTENT CHANGES LIVER LIPIDS IN CATS' JOURNAL OF NUTRITION, WISTAR INSTITUTE OF ANATOMY AND BIOLOGY, PHILADELPHIA, PA., US, vol. 121, no. 10, 1991, pages 1522-1528, XP008019214 ISSN: 0022-3166

2. The present application does not meet the requirements of Article 33 (2) PCT because the subject-matter of independent claims 1, 11, 27 and 32 is not new.

Claim 1: Assimilation is defined as the process of absorbing nutrients into the body after digestion, whereupon these nutrients will be converted to protoplasm. Therefore, assimilation is related to digestion. The document D1 discloses a method of providing a pet with a benefit relating to the effective assimilation of a lipid or lipid fraction comprising the steps of administering to the pet an edible composition which contains an intestinal mucosa function promoter (whey protein) in an amount effective to maintain, improve or enhance the capacity of the pet to digest lipid. Applicant states rightly that the whey protein is involved in fat absorption however the effect of the fat absorption is to at least maintain the supply of lipid (i.e. glycerides and fatty acids) to

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sites where digestion may take place. Therefore the teaching of D1 can be summarised as providing benefits relating to assimilation by maintaining or improving or enhancing the capacity of the subject animal to digest lipid by means of administering to the pet animal whey protein (see D1; the whole document).

Claim 11: The whey promoter is administered to the pet as part of a nutritional regime for maintaining, improving, promoting or otherwise enhancing lipid digestibility as reasoned above by administering the promoter to the pet according to predetermined directions (see D1; page 562 and table 5 and 6).

Claim 27 and 32: The document D1 discloses a food product suitable for pets which comprises an intestinal function promoter and a method of manufacture of said product (see D1; page 562).

3. Dependent claims 2-10, 12-26, 28-31 and 33-37 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step, as the features of these dependent claims have already been employed for the same purpose in similar compositions and processes (see whole document D1-D5).

4. The applicant is reminded that for the assessment of the present claims 1-26 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.